

## HOUSE BILL NO. 701

INTRODUCED BY NOENNIG

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO DECEDENTS' ESTATES, PRINCIPAL AND INCOME ALLOCATIONS, AND TRUSTS; AMENDING SECTIONS 30-10-909, 72-3-1101, 72-4-303, 72-16-906, AND 72-34-442, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 30-10-909, MCA, is amended to read:

**"30-10-909. Fraudulent and other prohibited practices.** ~~(1)~~ It is unlawful for a person, in connection with the offer or sale of any living trust, directly or indirectly, in, into, or from this state, to:

~~(a)~~(1) employ any device, scheme, or artifice to defraud;

~~(b)~~(2) make any untrue statement of a material fact;

~~(c)~~(3) fail to state a material fact necessary to render any statement made not misleading; or

~~(d)~~(4) engage in any other act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

~~(2) It is unlawful for a person to sell a living trust to a person for whom a living trust is not suitable."~~

**Section 2.** Section 72-3-1101, MCA, is amended to read:

**"72-3-1101. Collection of personal property by affidavit.** (1) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed ~~\$20,000~~ \$50,000;

(b) 30 days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1)."

**Section 3.** Section 72-4-303, MCA, is amended to read:

**"72-4-303. Filing of letters, bond, inventory, and affidavit.** (1) The domiciliary foreign personal representative of the estate of a nonresident decedent, who wishes to receive payment and delivery as described in 72-4-306 or to exercise the powers over assets described in 72-4-310, shall file ~~in duplicate~~ with a district court in this state in a county in which property belonging to the decedent is located:

(a) an authenticated ~~copies~~ copy of the personal representative's appointment and of any official bond given;

(b) an inventory of the property of the nonresident decedent located in this state, which must contain the information prescribed in 72-3-607; and

(c) an affidavit stating:

(i) the date of death of the nonresident decedent; and

(ii) that no local administration or application or petition for local administration is pending in this state.

(2) Upon receiving the information required by subsection (1), the clerk of court shall issue a certificate to the domiciliary foreign personal representative identifying the representative as having registered with the district court and stating the name and date of death of the decedent."

**Section 4.** Section 72-16-906, MCA, is amended to read:

**"72-16-906. Required filing of United States estate tax return.** The personal representative or domiciliary foreign personal representative of the estate of any decedent ~~dying~~ WHO DIED prior to January 1, 2005, whose estate is required to file a United States estate tax return shall file a duplicate of the United States estate tax return with the department of revenue."

**Section 5.** Section 72-34-442, MCA, is amended to read:

**"72-34-442. Receipts from liquidating assets -- allocation.** (1) In this section, "liquidating asset"

means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to 72-34-441, natural resources subject to 72-34-443, timber subject to 72-34-444, a derivative or option subject to 72-34-446, an asset subject to 72-34-447, or any asset for which the trustee establishes a reserve for depreciation under 72-34-450.

(2) A trustee shall allocate to income ~~40%~~ 85% from a liquidating asset and the balance to principal."

**NEW SECTION.** **Section 6. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 7. Retroactive applicability.** [Section 4] applies retroactively, within the meaning of 1-2-109, to deaths occurring after December 31, 2004, for which the probate of the decedents' estates closes after [the effective date of this act].

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